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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,966	12/01/2003	Lee J. Brown	1612	3032
20576	7590	08/19/2009		
ALFRED J MANGELS 4729 CORNELL ROAD CINCINNATI, OH 452412433			EXAMINER LAUX, JESSICA L	
			ART UNIT 3635	PAPER NUMBER
			MAIL DATE 08/19/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/724,966

**Applicant(s)**

BROWN, LEE J.

**Examiner**

JESSICA LAUX

**Art Unit**

3635

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-4, 6, 7, 9-13 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-4, 6, 7, 9-13 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed 7/27/2009 have been fully considered but they are not persuasive.

Applicant's arguments that the device of Landis is not integrally formed is not persuasive. Applicant argues that the device of Landis is a three part piece; however the office maintains that Landis does disclose a substantially L-shaped body that is integrally formed as claimed (as seen in figure 2 and noted in the body of the rejection previously presented and included below). The mere fact that the L-shaped body of Landis is used in conjunction with other elements (for example elements 15, 20 and 16) does not render the claims novel. As claimed, Landis discloses an L-shaped body; the office in no way indicates elements 15, 20 and 16 to be part of the integral L-shaped body as applicant is arguing. Therefore the arguments are not persuasive.

In response to applicant's arguments regarding the gutter cover panel, the recitations relating to the overlying gutter cover panel have not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). However, all functional language relating to the gutter cover panel and how the bracket is intended to

be used with a gutter cover panel have been given patentable weight as can be noted in the rejection below. The limitations in the claim pertaining the gutter cover are recitations of an intended use, which does not further limit the structural features of the claimed invention. It has been held that a recitation regarding the manner in which a claimed apparatus is intended to be used does not differentiate the claimed apparatus from a prior art apparatus which satisfies the claimed limitations. In this instant case the gutter cover panel is recited in the claims in a functional/capability statement only and is not positively claimed. The device of Landis is certainly capable of being used with a gutter cover panel in the claimed manner and therefore Landis anticipates the claim even though the reference does not expressly disclose a gutter cover panel. The functional limitations in the claim fail to provide distinguishing structural features that the Landis reference is not capable of, and applicant has not provided sufficient fact and evidence to support a statement that Landis is not capable of use with a gutter cover panel as claimed.

Applicant's arguments that Landis does not disclose a first bore for securing the bracket to a substantially vertical building surface are not persuasive as the bore (36) of Landis is clearly used in conjunction with other structure (for example elements 25,20,15) for securing to a vertical structure as clearly seen in figure 1.

Applicant's argument that Landis does not disclose a second bore capable of receiving a cover panel fastener is not persuasive. As noted above, the fact that Landis does not expressly disclose the gutter cover panel does not render the device of Landis incapable of use with one. Therefore the office maintains that the bore (the hole

generally disclosed at 32 and as seen in figure 2) or Landis is capable of receiving a cover panel fastener (depending on the gutter cover panel design).

Applicant's argument that it would not be obvious to incline the horizontal portion of the bracket because the reference does not disclose such a feature is not persuasive. A reference does not need to expressly disclose a feature for it to be obvious. Obviousness determination is based on many factors, including the common sense of one of ordinary skill in the art. Applicant has not addressed the obviousness rationale presented in the rejection in such a way as to overcome the rejection. The office maintains that one of ordinary skill in the art would have had the common sense to angle the bracket to achieve maximum rainfall catch.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 2-4, 6-7, 9-13, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landis (3333803).**

Claim 9: Landis discloses a support bracket for positioning within a rain gutter that includes an overlying gutter cover panel, said bracket comprising:

a) a unitary substantially L-shaped body (as seen in figure 2) including a first leg (33, 35, 37, 38, 39) adapted to be oriented substantially vertically when the bracket is

installed in a .gutter, and a second leg (30) integrally formed with the first leg and adapted to be oriented substantially horizontally when the bracket is installed in a gutter, the first leg including a mounting surface (element 33) adapted to contact a rear wall of a gutter (as seen in figures 1, 5) and a front surface (39) spaced from the mounting surface and connected therewith by a central panel (35,37) that extends between the mounting surface and the front surface;

b) at least one first bore (at 36) extending through the first leg toward the mounting surface and generally aligned with the second leg for receiving a bracket fastener for securing the bracket to a substantially vertical building surface adjacent to a roof edge;

c) at least one second bore (generally at 32) extending into the second leg capable of receiving a cover panel fastener for securing a front edge of an overlying gutter cover panel to the bracket;

d) engagement means (31) carried by the second leg for engaging and supporting a front wall portion of a gutter, the second leg including a stop surface (the bottom of 31, generally near 14 of figure 1) for abutment with and positioning relative to the bracket of a front edge of an overlying gutter cover panel, wherein the stop surface is positioned below an opening of the at least one second bore; and

e) upwardly-facing, flat support surface means (35) carried by the first leg for engaging a rear surface portion of the gutter cover panel.

Landis discloses the support bracket above, but does not expressly disclose that the support surface is angled in a downward direction, such as an angle of 85-60 degrees or 75 degrees, toward the gutter front wall.

However it would have been obvious at the time the invention was made to modify the support surface of Landis to have the claimed inclination or angles to achieve a desired and optimal positioning of the gutter relative to the roof thereby maximizing rainfall catch.

Claim 2: A support bracket in accordance with claim 1, wherein the first leg includes at least two first bores spaced from each other along the first leg and extending through the first leg (as seen in the figure 1).

Claim 3: A support bracket in accordance with claim 9, wherein the at least one second bore is a blind bore (as seen in the figure).

Claim 4: A support bracket in accordance with claim 9, wherein the engagement means is a hook member that is adapted to engage a reentrant lip carried at an upper front edge of a gutter (where 31 is configured as a hook capable of engaging a reentrant lip).

Claims 10-13: A support bracket in accordance with claim 9, including at least one aperture (generally at 34 or 32) in the bracket body and extending transversely relative to a substantially vertical plane passing through the first and second legs for receiving a fastener for fastening an end cap relative to the bracket, where the aperture is in the central panel of the first leg (34), a central panel of the second leg (32) or both (34 and 32).

Claim 15: A support bracket in accordance with claim 9, including a contact surface and stop (the upward surface of element 30 between 33 and 31) carried by the second leg between the first leg and the engagement means for contact with an intumed end of an overlying gutter cover panel.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JESSICA LAUX whose telephone number is (571)272-8228. The examiner can normally be reached on Monday thru Thursday, 9:00am to 5:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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/Richard E. Chilcot, Jr./  
Supervisory Patent Examiner, Art Unit 3635

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Examiner, Art Unit 3635